

## Financial Services Group News Alert Implementation of the Directive on Privacy and Electronic Communications

### BACKGROUND

On 27 March 2003, the Department of Trade and Industry (the "DTI") published a consultation document [URN 03/672](#) on the implementation of the Directive on Privacy and Electronic Communications (Directive [2002/58/EC](#), the "Privacy Directive"). The Privacy Directive updates the existing Telecoms Data Protection Directive (Directive [97/66/EC](#), the "TDPD") by adding further protection for individuals and companies against misuse of their contact and other details. The proposed implementing legislation has wide ranging implications for companies involved in the telecoms sector and all companies that market to individuals or other companies by any electronic means.

We would urge you to respond to the proposals in the consultation, which are likely to be of wide-reaching effect. Responses are required by 19 June 2003.

### MAIN POINTS OF THE CONSULTATION

Views are invited on the draft [Privacy and Electronic Communications \(EC Directive\) Regulations 2003](#) (the "Privacy Regulations"), which are expected to be brought into force on 31 October 2003. Highlights for consultation include:

- How the [protections](#) in the Privacy Regulations should vary between individuals and companies.
- Whether further amendments to the TDPD are required.
- Consideration of [security](#) and confidentiality issues, including what information should be provided to Internet users about cookies and how they might be allowed to refuse their use.
- Tighter restrictions on [unsolicited commercial communications](#). These include:
  - (a) Extending existing restrictions in the TDPD to emails and SMS (text messages); and
  - (b) Introducing an "opt-in" requirement for all marketing communications by email except in limited circumstances. The sender can market its own products and services where the sender obtained the recipient's contact details during sale (or negotiation of sale) of a product or service, and the sender has taken reasonable steps to ensure the recipient is aware of the nature of these products or services. An "opt-out" must then be offered each time such a marketing email is sent.
- Strengthened [enforcement](#) and information powers for the Information Commissioner, the body with responsibility for policing the Privacy Regulations.
- Telecoms-specific issues include requirements for [subscriber directories](#) (covering all phone, fax and email directories) and the ["value added" services](#) based on "traffic" or "location" data, such as itemised billing, caller line identification and the tracing of malicious calls.

Please contact [Emily Reid](#) or any member of the Lovells [Financial Services Group](#) if you require further information or assistance.

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